

## Comptroller of the Currency, Treasury

## § 10.1

“Commission” are deemed to refer to the “OCC.”

(b) The rules adopted by the SEC pursuant to section 17A of the Securities Exchange Act of 1934 prescribing operational and reporting requirements for transfer agents (17 CFR 240.17Ac2-2, and 240.17Ad-1 through 240.17Ad-17) apply to the domestic activities of national bank transfer agents.

[61 FR 68554, Dec. 30, 1996, as amended at 68 FR 70131, Dec. 17, 2003]

### INTERPRETATIONS

#### § 9.100 Acting as indenture trustee and creditor.

With respect to a debt securities issuance, a national bank may act both as indenture trustee and as creditor until 90 days after default, if the bank maintains adequate controls to manage the potential conflicts of interest.

#### § 9.101 Providing investment advice for a fee.

(a) *In general.* The term “fiduciary capacity” at § 9.2(e) is defined to include “investment adviser, if the bank receives a fee for its investment advice.” In other words, if a bank is providing investment advice for a fee, then it is acting in a fiduciary capacity. For purposes of that definition, “investment adviser” generally means a national bank that provides advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). Additionally, the qualifying phrase “if the bank receives a fee for its investment advice” excludes those activities in which the investment advice is merely incidental to other services.

(b) *Specific activities—(1) Full-service brokerage.* Engaging in full-service brokerage may entail providing investment advice for a fee, depending upon the commission structure and specific facts. Full-service brokerage involves investment advice for a fee if a non-bank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*).

(2) *Activities not involving investment advice for a fee.* The following activities generally do not entail providing investment advice for a fee:

(i) Financial advisory and counseling activities, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general;

(ii) Client-directed investment activities (*i.e.*, the bank has no investment discretion) where investment advice and research may be made available to the client, but the fee does not depend on the provision of investment advice;

(iii) Investment advisory activities incidental to acting as a municipal securities dealer;

(iv) Real estate management services provided to other financial institutions;

(v) Real estate consulting services, including acting as a finder in locating, analyzing, and making recommendations regarding the purchase of property, and making recommendations concerning the sale of property;

(vi) Advisory activities concerning bridge loans;

(vii) Advisory activities for homeowners’ associations;

(viii) Advisory activities concerning tax planning and structuring; and

(ix) Investment advisory activities authorized by the OCC under 12 U.S.C. 24(Seventh) as incidental to the business of banking.

[63 FR 6473, Feb. 9, 1998]

## PART 10—MUNICIPAL SECURITIES DEALERS

Sec.

10.1 Scope.

10.2 Filing requirements.

AUTHORITY: 5 U.S.C. 93a, 481, and 1818; 15 U.S.C. 78o-4(c)(5) and 78q-78w.

SOURCE: 63 FR 29094, May 28, 1998, unless otherwise noted.

### § 10.1 Scope.

This part applies to:

(a) Any national bank, District bank, and separately identifiable department

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or division of either (collectively, a national bank) that acts as a municipal securities dealer, as that term is defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)); and

(b) Any person who is associated or to be associated with a national bank in the capacity of a municipal securities principal or a municipal securities representative, as those terms are defined in Rule G-3 of the Municipal Securities Rulemaking Board (MSRB).<sup>1</sup>

### § 10.2 Filing requirements.

(a) A national bank shall use Form MSD-4 (Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) for obtaining the information required by MSRB Rule G-7(b)(i)-(x) from a person identified in § 10.1(b). A national bank receiving a completed MSD-4 form from a person identified in § 10.1(b) must submit this form to the OCC before permitting the person to be associated with it as a municipal securities principal or a municipal securities representative.

(b) A national bank must submit Form MSD-5 (Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer) to the OCC within 30 days of terminating a person's association with the bank as a municipal securities principal or municipal securities representative.

(c) Forms MSD-4 and MSD-5, with instructions, may be obtained by contacting the OCC at 250 E Street, SW., Washington, DC 20219, Attention: Bank Dealer Activities.

[63 FR 29094, May 28, 1998, as amended at 63 FR 71343, Dec. 24, 1998]

## PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

Sec.

11.1 Authority and OMB control number.

<sup>1</sup>The MSRB rules may be obtained by contacting the Municipal Securities Rulemaking Board at 1150 18th Street, NW., Suite 400, Washington, DC 20036-3816.

## 12 CFR Ch. I (1-1-05 Edition)

11.2 Reporting requirements for registered national banks.

11.3 Filing requirements and inspection of documents.

11.4 Filing fees.

AUTHORITY: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

SOURCE: 57 FR 46084, Oct. 7, 1992; 57 FR 54499, Nov. 19, 1992.

### § 11.1 Authority and OMB control number.

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (Commission) to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (1934 Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), regarding national banks and banks chartered in the District of Columbia with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the 1934 Act (registered national banks). Further, the OCC has general rulemaking authority under 12 U.S.C. 93a, to promulgate rules and regulations concerning the activities of national banks and banks chartered in the District of Columbia.

(b) *OMB control number.* The collection of information contained in this part was approved by the Office of Management and Budget under OMB control number 1557-0106.

[57 FR 46084, Oct. 7, 1992; 57 FR 54499, Nov. 19, 1992, as amended at 60 FR 57332, Nov. 15, 1995]

### § 11.2 Reporting requirements for registered national banks.

(a) *Filing, disclosure and other requirements—*(1) *General.* Except as otherwise provided in this section, a national bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the 1934 Act (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations, and forms adopted by the Securities and Exchange Commission (Commission) pursuant to:

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the 1934 Act (15 U.S.C. 78f(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and